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Carriage of Goods by Sea Act-Package-Limitation of Liability (Smythgreyhound v. M/V "Eurygenes")

> California's exclusion of these appellees from the position of deputy probation officer stems solely from state parochialism and hostility toward foreigners who have come to this country lawfully. I find it ironic that the Court invokes the principle of democratic self-government to exclude from the law enforcement process individuals who have not only resided here lawfully, but who now desire merely to help the State enforce its laws. Section 1031(a) violates appellees' rights to equal treatment and an individualized determination of fitness.[9]

CARRIAGE OF GOODS BY SEA ACT — PACKAGE — LIMITATION OF LIABILITY —*Smythgreyhound v. M/V "Eurygenes"*, 666 F.2d 746 (2d Cir. 1981).

Appellants filed suit in the United States District Court for the Eastern District of New York against appellees to recover cargo losses incurred when the vessel M/V Eurygenes, while en route from Japan to Europe, caught fire and caused damage to appellant's cargo. This action was transferred to the Southern District of New York and consolidated with other actions arising out of the fire. A settlement and consent decree was entered with respect to some of the claimants. One issue which remained unresolved, however, was the amount of recovery allowed for damages to three shipments, made by Universal Electric Merchandise Co., consisting of stereo equipment packed in containers. Section 4(5) of the Carriage of Goods by Sea Act (COGSA) limits recovery to five hundred dollars per package, unless a description of the item and its value appeared on the bill of lading.[1] Here, the stereo equipment was initially packaged in cartons, but upon loading, the carrier packaged them in containers. The bill of lading only indicated the number of cartons and containers.

Appellants maintained that the term "package" referred to each carton, while appellees maintained that the word referred to the containers in which the cartoned equipment was shipped. The district court referred the issue to Magistrate Raby. The Magistrate concluded that the parties intended each carton to constitute the COGSA "package." The district court rejected the Magistrate's findings, but found that the limitation applied to the containers. It held that the shipper

9. *Id.* at 4103.

1. 46 U.S.C. § 1304(5) (1976).

acquiesced in the definition of the container as the COGSA "package" because the shipper had the option to ship its goods either break-bulk or by container and it chose to containerize.

After the district court's decision, the Second Circuit ruled, in *Mitsui & Co. v. American Export Lines, Inc.*,[2] that "a container supplied by the carrier is not a COGSA package if its contents and the number of packages or units are disclosed (in the bill of lading). . . ."[3] The basis of this appeal was whether the lading district court's decision should be upheld in light of *Mitsui*.

The Second Circuit reversed and remanded. In an opinion by Judge Blumenfeld, the court concluded that, contrary to appellees' assertions, the nonexistence of a packaging choice for the shipper was not a critical factor in *Mitsui*. The court reasoned that *Mitsui* attempted "to give effect to the congressional purpose of establishing a reasonable *minimum* level of liability."[4] Thus, any construction that reduces a carrier's liability below reasonable levels must be carefully scrutinized.

The court also rejected appellees' second contention that this policy was inapplicable because the shipment did not originate or end in the United States. Therefore, the parties' intent should control.[5] The court concluded that the intent of the parties was not clear and unambiguous. Moreover, they had specified in the bill of lading that United States law should govern.

Finally, the court held *Mitsui* applicable. It reiterated that the nonexistence of choice was not an essential component in *Mitsui*, thus, the lower court's decision had to be re-examined. After examining the bill of lading the court found that it did not disclose the contents of the container, therefore, the five hundred dollar limitation applied to the cartons.

FOREIGN JUDGMENTS — ENFORCEMENT — *Tahan v. Hodgson*, 662 F.2d 862 (D.C. Cir. 1981).

Appellant, Chamis Tahan, brought this suit in the District Court for the District of Columbia against Sir John Hodgson to enforce a default judgment obtained in an Israeli court. Tahan, the operator of a

2. 636 F.2d 807 (2d Cir. 1981).
3. *Id.* at 821.
4. 666 F.2d at 750.
5. 46 U.S.C. § 1300 (1976).